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FISCAL IMPACT STATEMENT

LS 6702

BILL NUMBER: HB 1154

NOTE PREPARED: Dec 18, 2020

BILL AMENDED:

SUBJECT: Cannabis Legalization.

FIRST AUTHOR: Rep. Summers

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill legalizes cannabis and establishes the Cannabis Regulatory Agency (CRA) to regulate cannabis, including the permitting of growers, processors, dispensaries, and cannabis researchers, and it creates the CRA Advisory Committee to advise the CRA.

Permits: It requires the CRA to adopt rules limiting the number of dispensaries that may be established in a city, town, or county, and to ensure that a sufficient number of dispensary permits are awarded to minority business enterprises and women's business enterprises. The bill establishes permit fees.

Criminal Penalties: It changes references to "marijuana" in the Indiana Code to "cannabis". It legalizes possession of cannabis and possession of paraphernalia used in connection with cannabis. The bill legalizes the manufacture and delivery of cannabis and paraphernalia if done in substantial compliance with cannabis legalization provisions. It makes: (1) possession of cannabis by a person less than 21 years of age; (2) delivery of cannabis to a person less than 21 years of age; and (3) consumption of cannabis in a public place; a Class B misdemeanor.

Sentence Modification: The bill allows a person sentenced for a cannabis offense committed before July 1, 2021, to petition for sentence modification even if the person would otherwise be barred from seeking sentence modification.

The bill also makes conforming amendments.

Effective Date: July 1, 2021.

Summary of NET State Impact: The bill is estimated to increase annual state expenditures between \$500,000 and \$600,000 in the initial years, to establish and operate the Cannabis Regulatory Agency (CRA) and a legislative advisory committee. These costs may increase depending on the number of employees needed to regulate legal cannabis over time. The costs may be at least partially offset with fees established by the CRA. The actual impact on the state General Fund will depend on when revenue streams are sufficient to meet the costs of the new agency.

Also, the bill establishes a new offense as a Class B misdemeanor and changes the criteria for two felonies associated with operating a vehicle while intoxicated. These changes are anticipated to have a minor effect overall on incarceration expenses and revenue from judgments, fines, and court fees.

Explanation of State Expenditures: Summary: The bill establishes a new agency of state government, the CRA. The CRA will regulate, enforce, and carry out the state laws concerning sales and distribution of cannabis products. Costs will ultimately depend on the hiring decisions and the level of enforcement undertaken by the CRA. The bill also establishes a nine-member legislative advisory committee. The cost will depend on the budget established by the Legislative Council. Recently, budgets for committees of similar size have been \$13,500 per interim.

Criminal Penalties: The bill will likely have minimal effect on DOC's offender population by allowing the court to consider reductions to or changes in sentences for offenses committed prior to July 1, 2021, that would not be an offense under the bill. The bill also adds ten nanograms of THC per milliliter of whole blood as evidence that a person was intoxicated when the person is accused of operating while intoxicated (OWI) or causing serious bodily injury or death while operating either a motor vehicle or watercraft. These changes are described in more detail under "*Additional Information*".

Cannabis is federally classified as a Schedule I controlled drug. Although 33 states have medical marijuana programs, future federal responses to state initiatives are unknown. Among the 15 states that have legalized adult use of marijuana, nine states have a system in place for cannabis sales and sales tax collections.

Additional Information - CRA: The CRA is comprised of four commissioners appointed by the Governor. Each commissioner is entitled to salary per diem and reimbursement of traveling and other expenses. The commissioners must execute surety bonds of \$10,000 and an oath of office. The commissioners will appoint an executive director, and may employ all necessary employees, determine their duties, and fix their salaries with the approval of the State Budget Agency.

In its regulatory capacity, the CRA will issue permits to qualifying organizations to grow, process, test, or dispense cannabis. The CRA will issue orders, assess civil penalties, bring actions in courts, and hold its own hearings. The employees of the CRA will inspect for potential violations of laws. The CRA regulates and enforces the cannabis program in Indiana, including establishing research and public outreach programs, restricting advertising and marketing of cannabis, and ensuring compliance with minority and women owned business requirements.

Comparison Commissions: The range of agency costs was based on the Indiana Gaming Commission (IGC), which has 7 commissioners and an executive director, with administrative and operations expenses and internal services costs of about \$550,000; and the Alcohol and Tobacco Commission (ATC), which has 4 commissioners, an executive secretary, and annual expenditures for administration and internal services of about \$530,000. [Internal services include databases, software, human resources services, and telephone expenses.]

Total IGC and ATC expenses are determined by their overall enforcement activities, the number of regulated entities, the complexity of items to be regulated, and the number of facilities to be inspected. Ultimately, the number of regulated entities under this bill may increase over time leading to increased expenditures by the CRA in future years.

Rules: The bill includes regulatory requirements for the permit holders and specifications for labeling cannabis products, electronic data bases to track production and processing, as well as the transport of cannabis. In Ohio, the rule setting process is expected to take two years for a medical marijuana program. The bill allows the CRA to adopt emergency rules through July 1, 2021.

Start-up Costs: All states that authorize adult use of marijuana also have medical marijuana programs, which may impact the overall cost to establish an adult use program in Indiana without a medical marijuana program. Programs with more oversight have higher costs. For example, Maryland anticipates needing \$3 M to \$4 M to oversee the quality and quantity of production, and Rhode Island added plant tags to monitor cultivation for an estimated cost of \$1.2 M. Additionally, costs for databases to track transactions from seed to sales are about \$1.7 M in Massachusetts, and Ohio reports spending \$1.4 M on information technology services.

Changes in Existing Crimes -

Ten Nanograms: Establishing a threshold of 10 nanograms [a nanogram is one billionth of a gram] for determining intoxication could reduce the number of persons who are convicted and sentenced for driving while intoxicated and when they operating either a vehicle or a watercraft and cause death or serious bodily injury. This change will more likely affect persons who are found guilty of a Class C misdemeanor and less likely to affect the few persons who are charged with OWI causing serious bodily injury or death. In these cases, other evidence of intoxication may be found during investigations.

The frequency of these offenses are shown in the following table based on citations from the Bureau of Motor Vehicles and the Abstracts of Judgment maintained by the Indiana Supreme Court.

Number of OWI Offenses with a Controlled Substance or Metabolite Found in the Person's Blood					
	CY 2016	CY 2017	CY 2018	CY 2019	CY 2020
IC 9-30-5-1 OWI as a Class C misdemeanor with metabolite	413	428	245	306	438
IC 9-30-5-4 OWI causing serious bodily injury	9	21	21	20	8
IC 9-30-5-5 OWI causing death of another person	16	13	13	16	9
IC 35-46-9-6 operating a motorboat while intoxicated as Class C misdemeanor	n/r	n/r	n/r	n/r	n/r
n/r = Five or fewer offenses					
Source: Indiana Supreme Court Abstracts of Judgment					

Possession and Dealing of Cannabis and Paraphernalia: The 10 nanogram threshold could reduce commitments to DOC for possessing or dealing cannabis and dealing paraphernalia, but the number is likely to be small.

The following table shows the level at which these offenses can be charged and could be affected by this bill.

	Felony		Misdemeanor			Infraction
	Level 5	Level 6	Class A	Class B	Class C	Class A
35-48-4-8.3 Possessing Paraphernalia			•		•	
35-48-4-8.5 Dealing in Paraphernalia		•	•			•
35-48-4-10 Dealing in Marijuana	•	•	•			
35-48-4-11 Possessing Marijuana		•	•	•		

Both dealing and possessing cannabis and dealing in paraphernalia could be felonies, depending on the person's prior history and the weight of the drug involved. On average, 27% of the persons who were convicted and sentenced for dealing in cannabis as a Level 5 felony were sentenced to DOC for an average 2.1 years while 4% of all persons who were convicted and sentenced for a Level 6 felony were sentenced to DOC for an average 1.0 years possession of cannabis as a Level 6 felony.

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually and \$59 daily during FY 2020. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is estimated at \$3,524 annually, or \$9.66 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,998 annually and \$246.40 per day in FY 2020. The marginal cost for juvenile facilities was \$3,969 annually or \$10.87 daily.

Sentence Modification: Offenders who are confined in a DOC facility for a nonviolent crime involving cannabis that was committed before July 1, 2021, could apply for a sentence modification without the consent of the prosecuting attorney. If the person was convicted of a cannabis offense based on an act that became legal after June 30, 2021, the court would be required to reduce the person's sentence by at least the amount of time that the person has served or will serve for that conviction. The number of offenders in DOC's facilities who might apply for a sentence modification under this bill is unknown but the bill would at least minimally reduce DOC's offender population.

Explanation of State Revenues: *Sales Tax:* Additional Sales Tax revenue would be collected on the sale of cannabis allowed by the bill. Annual revenue could be approximately \$16.7 M to \$22.3 M when the permitting and regulatory programs are fully implemented. Revenue collections would begin in FY 2022. Sales Tax revenue is deposited in the state General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

Controlled Substance Excise Tax: The controlled substance excise tax in existing law of \$3.50 per gram of cannabis or the \$40 per pill, capsule, hit, rock, or dosage of a Schedule I controlled substance is repealed with regard to cannabis. The controlled substance excise tax is due when a person receives delivery of, takes possession of, or manufactures a controlled substance in violation of state or federal law. A total of \$3,241 was collected in FY 2020 and deposited in the Controlled Substance Tax Fund. Money in this fund is distributed to the Law Enforcement Training Board, individuals or law enforcement agencies that provide information leading to the collection of the tax, and the Drug-Free Communities Fund.

Application and Permit Fees: The following fees apply for grower or processors and dispensaries. Application and permit fees established in the bill will be deposited in the state General Fund.

Grower or Processor	Application fee (nonrefundable)	\$10,000
	Permit fee (refundable)	\$50,000
	Permit renewal fee (refundable)	\$10,000
	Permit amendment fee (nonrefundable)	\$250
Dispensary (at each location)	Application fee (nonrefundable)	\$5,000
	Permit fee (refundable)	\$20,000
	Permit renewal fee (refundable)	\$5,000
	Permit amendment fee (nonrefundable)	\$250
Testing Laboratory	Application fee (nonrefundable)	\$2,000
	Permit fee (refundable, per location)	\$10,000
	Permit renewal fee (refundable)	\$2,000
	Permit amendment fee (nonrefundable)	\$250

Penalty Provisions: The new crime of unlawful cannabis use, a Class B misdemeanor is established. The maximum fine for a Class B misdemeanor is \$1,000. However, any additional revenue would likely be small.

The increase in the threshold of evidence of intoxication to ten nanograms of THC for certain watercraft and vehicular felonies could reduce the number of felony cases related to cannabis that would be prosecuted. If fewer cases are prosecuted because of these changes, less revenue could be collected from criminal fines. Ultimately, the combined additions and changes to current criminal and penalty provisions may have an indeterminate impact on revenues from fines and court fees, impacting the Common School Fund and the state General Fund.

Civil Penalties: The CRA may assess a penalty of \$10,000 for each violation of the medical cannabis law or rules established under the law and a \$1,000 penalty for each day of continuing violation. Depending on the circumstances of the violation, the CRA may issue a written warning instead of a monetary penalty. [Civil penalties are deposited in the state General Fund.]

Additional Information - Sales Tax: The estimated revenue from Sales Tax on cannabis is based on sales in other states that have recently legalized adult-use cannabis as well as the number of people in Indiana who use marijuana, as reported in the 2017-2018 National Survey on Drug Use and Health. In this survey, about 530,000 people in Indiana 18 years and older reported using cannabis in the past month, and 797,000 reported use in the last year. (The bill allows people 21 years of age and older to purchase cannabis.) Illinois began allowing sales of adult-use cannabis in January 2020. Between January 2020 and October 2020, retail cannabis sales totaled \$507.0 M, and average monthly sales were \$50.7 M. Legal cannabis sales began in Michigan in December 2019. Retailers sold a total of \$378.8 M from December 2019 through September 2020. Average monthly sales in Michigan were \$37.9 M. Both Illinois and Michigan have approximately 2.4 million residents 18 years and older who reported using cannabis in the past year or in the past month in the 2017-2018 National Survey on Drug Use and Health.

Explanation of Local Expenditures: *Penalty Provisions:* The bill would likely significantly reduce the number of persons confined in a county jail either while obtaining bail, awaiting trial or confined after trial. A Class A misdemeanor is punishable by up to one year in jail while a Class B misdemeanor is punishable by up to 180 days in jail. The average cost per day is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

Sentence Modification: Permitting certain offenders to petition for a sentence modification could increase the workload of the courts that sentenced these offenders.

Explanation of Local Revenues: *Penalty Provisions:* The combined additions and changes to current criminal and penalty provisions may have an indeterminate impact on revenues from fines and court fees.

State Agencies Affected: Department of Correction; Cannabis Regulatory Agency.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Department of Correction; Abstracts of Judgment, Indiana Supreme Court; Bureau of Motor Vehicles; Various state program websites and contacts available from LSA upon request; Substance Abuse and Mental Health Services Administration, 2017-2018 National Survey on Drug Use and Health, State-Specific Tables, February 28, 2020; Illinois Department of Financial and Professional Regulation, Illinois adult use cannabis monthly sales figures, November 2, 2020; Michigan Marijuana Regulatory Agency Statistical Reports.

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